

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/042,371 Confirmation No.: 6761
Applicant: Andrew C. Gilbert (deceased)
Title: CREATING AND TRADING DYNAMIC SECURITIES
Filed: December 27, 2001
Art Unit: 3691
Examiner: Chuks N. Onyezia

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PAPER

Applicant hereby retracts the Remarks/Arguments made at pages 8-9 of the Amendment dated February 6, 2007 and also retracts the statements/arguments made in the Paper dated June 4, 2007 (hereinafter collectively the "Arguments"). In particular, the Arguments may not be used to limit or interpret any claim of any patent issuing on this application or any other application, and should not be taken as a surrender or disclaimer of any subject matter from the scope of any such claim. In addition, the Arguments may not be used to limit or interpret the subject matter of any patent or application to which the present application may pertain, and should not be taken as a surrender or disclaimer of any subject matter from the scope of any such patent or application. Similarly, the Arguments should not be used to limit or interpret any claim of any patent to which the present application may pertain, and should not be taken as a surrender or disclaimer of any subject matter from the scope of any such claim.

Applicant hereby requests that the Remarks/Arguments made at pages 8-9 of the Amendment dated February 6, 2007 be replaced by the following:

By this paper, Applicant responds to the Office Action of November 9, 2006 and respectfully requests reconsideration of the application.

Claims 13-18, 21, 22, 24-26, 28, 29, 42-47 are now pending, a total of 19 claims. Claims 13, 24 and 42 are independent.

Claims 13, 24, and 42 as originally presented recited “*comparing [a] rate of return ... to a pre-determined target rate of return*,” and that language remains essentially unamended. The Office Action compares this language to paragraph [0018] of Pritchard ‘154. The comparison is inapt. Pritchard paragraph [0018] discloses:

In one aspect of the invention, the financial data processing system may monitor the performance of the underlying investment instruments of the trust, as well as the trust itself, in order to generate reports to investors and/or brokers on the value of the trust and its underlying investment instruments, on the present and expected return of the investment and other information. Such reports, which may have different levels of detail, may be valuable to investors and/or brokers who follow the value of their investment and may wish to optimize or alter their investment strategy.

An “expected return” as disclosed by Pritchard paragraph [0018] is not a “*target*” rate of return, let alone a “*pre-determined target*” rate of return as recited by the claims. In addition, even assuming, *arguendo*, that an “expected return” as disclosed by Pritchard paragraph [0018] is a “*pre-determined target rate of return*,” Pritchard paragraph [0018] does not disclose “*comparing a rate of return*” to the expected return. Accordingly, because Pritchard paragraph [0018] does not disclose “*comparing [a] rate of return ... to a pre-determined target rate of return*” as recited by the claims, the Examiner failed to establish a *prima facie* case of anticipation.

Pursuant to 35 U.S.C. § 103(c), Pritchard ‘154 cannot participate as an obviousness reference, because both Pritchard ‘154 and this application were, at the time the invention of this application was made, owned by or subject to an obligation of assignment to the same assignee, Cantor Fitzgerald. The Pritchard ‘154 application was subsequently assigned to a corporate affiliate of Cantor Fitzgerald, eSpeed Inc.

In view of the amendments and remarks, Applicant respectfully submits that the claims are in condition for allowance. Applicant requests that the application be passed to issue in due course

Respectfully submitted,
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Dated: December 3, 2007

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